

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION )

**THIS DOCUMENT RELATES TO:**

*US ex rel. Ven-a-Care of the Florida Keys,* )  
*Inc., v. Abbott Laboratories, Inc.* )  
NO. 07-CV-11618-PBS )

) **MDL No. 1456**  
) **Civil Action No. 01-12257-PBS**  
)  
) Subcategory No. 06-11337-PBS  
)  
) Hon. Patti B. Saris  
)  
)  
)

**NOVEMBER 1, 2009 STATUS REPORT  
OF THE RELATOR, VEN-A-CARE OF THE FLORIDA KEYS**

The Relator, Ven-A-Care of the Florida Keys, Inc. (AVen-A-Care@ or the  
ARelator@), through its undersigned counsel respectfully files this Status Report for June 1,  
2009 in accordance with the Court=s June 17, 2004 Procedural Order and states:

**Motion to Dismiss**

On March 14, 2008, the Court denied Abbott=s Motion to Dismiss Ven-A-Care=s  
Complaint. Abbott sought an appeal of this decision. On July 15, 2008, the Court denied  
Abbott=s Request for Certification Pursuant to ' 1292(b) and Stay of Discovery.

Abbott filed a separate Motion to Dismiss for Lack of Subject-Matter Jurisdiction  
on August 28, 2009. On November 2, 2009, Ven-a-Care responded to this Motion. On  
that same date Ven-a-Care also filed extensive briefing and evidence, which was  
incorporated by reference, concerning Defendants Abbott, Dey and Roxane=s, allegations

of specific public disclosures. In this filing, Ven-a-Care also made its showing that it is an Original Source of its allegations, specifically, in those cases as well as this instant case. The briefing will be concluded no later than December 18, 2009 and this matter will be ready for decision or hearing, if this Court desires.

### **Case Management Order**

On September 2, 2008 the Court entered a Case Management Order in this case. Subsequently, an Order was entered granting a Motion (document 490) which set the following briefing schedule in this case:

Responses/Oppositions to already filed Motions due: Nov. 2, 2009

Replies due: Dec. 4, 2009

Sur-replies, if any, due: Dec. 18, 2009

The conclusion of this briefing schedule lags behind the briefing schedule in the related cases brought by Ven-a-Care against Abbott, Dey and Roxane by seven (7) days.

### **Scheduled Hearings**

None. However, once all Motion to Dismiss, Summary Judgment, and Motion in Limine briefing is completed per the effective Order setting the briefing schedule, then Ven-a-Care stands ready if this Court determines a hearing is necessary. In a Joint Motion (document 280), Ven-a-Care requested the hearing, if any, of Abbott's Motion to Dismiss and *Daubert* Motion be heard in conjunction with the hearing of the similar Motions in the related cases, while Abbott requested the Court hold the hearing "at a later date."

### **Pending Discovery**

The parties have filed a FRCP 26(f) report which included provisions for the use of prior discovery materials and deposition testimony in this case. The parties exchanged

initial disclosures on August 22, 2008. The Relator has also filed amended Disclosures. The parties have exchanged written discovery requests and written discovery responses. The parties have coordinated the respective productions of sales transaction drug pricing data from Abbott and Medicaid claims data from the United States and the Centers for Medicare and Medicaid Services. These datasets were delivered by and to the parties on or about Dec. 2, 2008. The parties participated in state Medicaid discovery. Fact discovery has closed. Expert discovery is also closed.

Dated: November 3, 2009

Respectfully submitted,

/s/ Jarrett Anderson

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For Ven-A-Care of the Florida Keys, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused an electronic copy of the above **PLAINTIFF VEN-A-CARE OF THE FLORIDA KEYS, INC.'S, NOVEMBER 1, 2009 MONTHLY STATUS REPORT** to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No.2 by sending a copy to Lexis Nexis File and Serve for posting and notification to all parties.

/s/ Jarrett Anderson

Dated: November 3, 2009